

AARON M. CLEFTON, Esq. (SBN 318680)
PAUL L. REIN, Esq. (SBN 43053)
REIN & CLEFTON, Attorneys at Law
200 Lakeside Drive, Suite A
Oakland, CA 94612
Telephone: 510/832-5001
Fax: 510/832-4787
info@reincleftonlaw.com

IRAKLI KARBELASHVILI, Esq. (SBN 302971)
ALLACCESS LAW GROUP
1400 Coleman Ave Ste F28
Santa Clara, CA 95050
Telephone: (408) 295-0137
Fax: (408) 295-0142
irakli@allaccesslawgroup.com

Attorneys for Plaintiff JAMES ALGER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES ALGER,)	Case No. 23-cv-1040
)	
Plaintiff,)	<i>Civil Rights</i>
)	
vs.)	COMPLAINT FOR
)	INJUNCTIVE AND
METANOVA, LLC, FKA HAZENS)	DECLARATORY RELIEF AND
INVESTMENT, LLC; PYRAMID)	DAMAGES
GLOBAL HOSPITALITY,)	
)	
Defendants.)	DEMAND FOR JURY TRIAL
)	
)	
)	
)	

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES

1 JAMES ALGER (“Plaintiff”) complains of defendants METANOVA, LLC,
2 FKA HAZENS INVESTMENT, LLC; PYRAMID GLOBAL HOSPITALITY
3 (collectively, “Defendants”) as follows:

4 **INTRODUCTION**

5 1. This is a civil rights action involving the lack of disabled access to the
6 building, structure, facility, complex, property, land, development, and/or business
7 complex known as “Sheraton Gateway Los Angeles Hotel” at 6101 W Century
8 Blvd, Los Angeles, CA 90045 (“Sheraton Gateway”). Specifically, Defendants
9 repeatedly denied Plaintiff, a person with a disability who uses a wheelchair or
10 scooter for mobility, access to the swimming pool/spa because their chair lifts were
11 inoperable and in disrepair. They did so over a period of more than six months
12 during each of Plaintiff’s multiple visits, and even after he complained each time to
13 resolve the issue prior to litigation. Defendants also harassed and endangered
14 Plaintiff when he parked in a disabled parking space because their valets have a
15 policy and practice of driving through the unloading access aisle of the disabled
16 parking spaces. Amazingly, Defendants valets honked at Plaintiff and told him to
17 get out of the way when he was disembarking his vehicle and using the parking
18 access aisle, so that the valet could drive through it.

19 2. Defendants’ lack of accessible facilities denies “full and equal” access
20 required by Title III of the Americans with Disabilities Act of 1990 and
21 supplementary California civil rights laws. As a result, Plaintiff has been
22 continuously denied full and equal access to Sheraton Gateway and has been
23 embarrassed and humiliated. Plaintiff seeks damages and injunctive relief requiring
24 provision of access under the Americans with Disabilities Act of 1990 (“ADA”)
25 and injunctive relief for full and equal access and statutory damages under
26 California law. Plaintiff also seeks declaratory relief and recovery of reasonable
27 statutory attorney fees, litigation expenses and costs under federal and state law.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 for violations of the ADA, 42 U.S.C. §§ 12101 *et seq.* Under supplemental jurisdiction, attendant and related causes of action, arising from the same facts, are also brought under California law, including, but not limited to, violations of Health and Safety Code and the Unruh Civil Rights Act.

4. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is in this District and that Plaintiff's causes of action arose in this District.

PARTIES

5. Plaintiff JAMES ALGER ("Plaintiff") is and at all times relevant here was, a qualified individual with a physical disability. Plaintiff suffers from Charcot-Marie-Tooth disease, a disorder that causes damage to the peripheral nerves and atrophies muscles. A work injury caused this disease to decline rapidly. As a result of his disability, Plaintiff has severe difficulty walking, as well as difficulty with fine motor skills. Plaintiff relies on a wheelchair or scooter to ambulate outside the home and is able to drive a vehicle equipped with hand controls but requires assistance once at his destination. Plaintiff requires assistance with activities of daily living such as dressing, grooming, loading his scooter in and out of vehicle if going to a remote location, etc. With a few exceptions, plaintiff is increasingly dependent on 24-hour care, and/or assistance. He does require overnight care. Plaintiff uses a noninvasive ventilator due to weakened respiratory muscles that affect his ability to adequately and safely breathe while lying down and requires assistance in setting it up, placing it on and taking it off as well as urgent assistance in the event of a power or unit failure. That assistance is generally provided by family members or friends of the family. Plaintiff's level of disability is such that once he is up and dressed for the day, he can proceed home which is equipped for

1 his disability so long as someone is there to assist as needed. Plaintiff possesses a
 2 disabled parking placard issued by the State of California and is a resident of
 3 Porter Ranch, California, about 45 miles from Sheraton Gateway.

4 6. Defendants are and were the owners, operators, lessors and/or lessees of the
 5 subject business, property, and buildings at all times relevant to this Complaint.

6 7. Defendants failed to ensure that the accommodations, goods, services, and
 7 opportunities were accessible to Plaintiff and other members of the public who
 8 have physical disabilities. Defendants' failure to comply with Federal and State
 9 access laws proximately caused the violations and ongoing violations and damages
 10 to Plaintiff complained of here.

11 **FACTUAL ALLEGATIONS**

12 8. Defendants have discriminated against Plaintiff because Sheraton Gateway'
 13 facilities and policies do not comply with the requirements of the ADA, the Unruh
 14 Act, the California Health and Safety Code, and the Disabled Persons Act.
 15 Defendants have failed and refused to provide full and equal access to the services,
 16 privileges, benefits, and advantages that they provide to persons without
 17 disabilities at Sheraton Gateway.

18 9. Sheraton Gateway and its facilities, including, but not limited to, its
 19 entrances/exits, parking, interior paths of travel, transaction counters, restrooms,
 20 pool, and spa are each a "public accommodation" and part of a "business
 21 establishment," subject to the requirements of § 301(7) of the ADA (42 U.S.C. §
 22 12181(7) and of California Civil Code §§ 51 *et seq.*

23 10. On information and belief, Sheraton Gateway and its facilities have, since
 24 January 26, 1993, undergone construction, alterations, structural repairs, and/or
 25 additions, subjecting the facility to disabled access requirements of § 303 of the
 26 ADA (42 U.S.C. § 12183). Such facilities constructed or altered since 1982 are
 27 also subject to "Title 24," the California State Architect's Regulations. Irrespective

1 of Sheraton Gateway’ construction and alteration history, removal of the access
2 barriers at the subject premises are subject to the “readily achievable” barrier
3 removal requirements of Title III of the ADA.

4 11. Plaintiff stays at Marriott branded hotels at least 75 nights a year and is a
5 Titanium member of Marriott, the highest level of elite membership. Plaintiff often
6 stays at Marriott branded hotels in the Los Angeles area because Plaintiff’s wife
7 typically works from home three days a week and in Gardena twice a week. During
8 the time she works in Gardena, Plaintiff still requires assistance with the operation
9 of his noninvasive ventilator at night, getting dressed, and ready for the day. A
10 friend of the family who often assists Plaintiff works in Hawthorne, CA. Therefore,
11 out of convenience, Plaintiff tries to get a hotel near their primary place of
12 employment.

13 12. Plaintiff’s residential community does not have a lift for the pool or the spa.
14 Therefore, it is crucial for Plaintiff that whenever staying at hotels, that he has an
15 opportunity to use the pool and spa for his health and enjoyment. Due to his
16 disabilities, Plaintiff cannot safely enter and exit the pool without the use of an
17 accessible pool lift. In Plaintiff’s experience, Marriott hotels frequently either do
18 not have a pool lift at all or have a pool lift that is inoperable. About 2 years ago,
19 Plaintiff complained to the Marriott corporate office regarding the prevalent pool
20 lift issue at five different Marriott hotels. While he was promised a response, none
21 came.

22 13. Plaintiff stayed at Sheraton Gateway on July 10-12, 2022; November 28-29,
23 2022; December 1-2, 2022; January 5-6, 2023; and January 23-24, 2023.

24 14. When Plaintiff arrived to check-in at Sheraton Gateway in the evening of
25 July 10, 2022, he parked in one of the designated accessible parking spaces at
26 Sheraton Gateway’s front parking lot. But he was unable to safely exit his car
27 because Defendants’ staff use the designated accessible parking spaces access aisle

1 and its adjacent wheelchair path of travel as a vehicular path to valet cars. The
2 valets use the access aisle space between the designated disabled parking spaces as
3 a short cut to the other side of the parking lot. When Plaintiff tried to exit his car
4 into the access, the valet honked at Plaintiff and told him to move out of the way.
5 Plaintiff closed his car's door and let the valet go through. The honking startled
6 and surprised Plaintiff, and he was afraid he might have been hit had he been
7 further along the process of getting out of his vehicle.

8 15. Plaintiff then made his way to the check-in counter, which was inaccessible
9 to him because it was very high:



16. In fact, *all* of check-in counters were too high with the exception of one, and
it was reserved for “airline crew check-in” only. Moreover, it did not have any
computer terminal that could be used for check-in. The high counter caused him
difficulty and discomfort in the check-in because he had reach up to the counter to
complete the process and he could not see easily what was on the counter.

1 17. The next day, Plaintiff went to the hotel swimming pool. But could not use
2 the pool or spa because the lifts were covered by a protective cover, and they were
3 not operable. Plaintiff complained to the front desk, and they confirmed that the
4 lifts were not operable because there was no battery:



5
6
7
8
9
10
11
12
13
14
15 18. When Plaintiff returned to Sheraton Gateway for his stay from November 28
16 to November 29, 2022, Plaintiff once again had difficulties parking in the
17 designated accessible parking space in the front parking lot. This time there was a
18 valet cone blocking the designated accessible parking space. Plaintiff's aid got out
19 of the car and moved the cone so that he could park. During this stay, valet
20 continued to use the wheelchair access aisle as a vehicular path. Plaintiff again had
21 difficulties completing the check-in process because the check-in counter was too
22 high. The next day, Plaintiff went down from his suit to the hotel swimming pool
23 but again could not use the pool or the spa because both lifts were covered with
24 protective covers and neither of them had batteries to operate them.

25 19. Plaintiff encountered the same architectural and policy barriers in the same
26 manner during his December 1-2, 2022; January 5-6, 2023; and January 23-24,
27

2023, stays at the Sheraton Gateway. As of January 27, 2023, Plaintiffs representatives confirmed that Defendants still continued to use the wheelchair access aisle as a vehicular path to valet car; the check-in counter was too high; and the pool and spa lifts were covered with protective covers and not operable.

20. On December 7, 2022, Plaintiff complained by email to Alex Francis of Pyramid Global:

Dear Sir,

I was given this email address by the front desk at the Sheraton, Gateway Hotel near Los Angeles international Airport. It is my understanding that you are the general manager. I am writing today with concerns I have regarding my recent stays.

On November 28 and again on December 1, 2022 I stayed at your property, the Sheraton, Gateway Hotel at LAX. As a Titanium Elite member of Marriott, it is my habit to stay at Marriott-branded hotels when I have the need to do so.

(my back up is IHG/Hilton but I digress)

I am disabled, require the use of a mobility scooter, or wheelchair, and am increasingly dependent on an additional individual to assist me. I do enjoy the use of the amenities, in fact, it tends to be why I choose a particular hotel. Of course, it starts with location, then, price, then amenities, specifically the availability of a pool and/or spa. Because of my disability, I require the use of a pool/spa lift. On both occasions, your lift was inaccessible. First, it was covered by a protective cover, which completely negates the ability of a disabled person in a wheelchair to access it. Secondly, and more troubling, there was no battery in which to operate the lift. Thirdly, and of highest concern, the staff did not have a functioning battery to use with the lift, rendering the lift inoperable. Sadly, this is an issue that I run into routinely with Marriott. As I have often said, too [sic] many managers, by now, if you have a pool lift, but a disabled person cannot operate it, then you do not have a pool lift.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES

1 When I brought my concerns to the manager on site, she did say they
2 would attempt to address the issue but I've not heard any follow-up of
3 any sort, so I am sending you this email in the hopes that you will be
4 able to rectify the situation.

5 I have included my contact information should you wish for any
6 additional information.

7 21. Plaintiff never received a response to this email.

8 22. On January 5, 2023, Plaintiff complained to Defendants' staff through
9 Marriott's web app about the lifts. Defendants' staff confirmed that the pool lifts
10 were out of order. Plaintiff did not receive any clear answer on when the lifts
11 would be fixed. On January 24, 2023, Plaintiff once again used the Marriott app to
12 complain about the inoperable lifts. Defendants' staff said that they will send
13 maintenance to the swimming pool. Plaintiff waited for maintenance near the pool,
14 but they did not show up. Shortly after, Plaintiff spoke to "Henry," the director of
15 Sheraton Gateway's front office. Plaintiff explained to Henry that he could not use
16 the swimming pool or the spa because the lifts are always inoperable. Henry told
17 Plaintiff that he would need to "double check" with Defendants' "director of
18 engineering to see what they've been doing, [and] if they took out a battery."
19 Despite these representations, the lifts for the pool and spa remain covered with
20 protective covers and the batteries are missing.

21 23. Plaintiff has been deterred from staying at the Sheraton Gateway more often
22 because of the ongoing architectural and policy barriers. Plaintiff would have
23 stayed at Sheraton Gateway on July 24, 2022; August 28, 2022; September 11,
24 2022; September 28, 2022; September 29, 2022; October 9, 2022; and November
25 6, 2022 but chose to stay elsewhere.

26 24. These barriers to access are listed without prejudice to Plaintiff citing
27

1 additional barriers to access after inspection by Plaintiff's access consultant, per
2 the 9th Circuit's standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034
3 (9th Cir. 2008), *Chapman v. Pier One Imports (USA), Inc.*, 631 F.3d 939 (9th Cir.
4 2011).

5 25. Plaintiff alleges that it would be a futile gesture to provide notices of
6 violations relating to his continued or attempted visits, which are certain to occur
7 regularly following the filing of this Complaint. Therefore, Plaintiff will seek to
8 supplement this Complaint at the time of trial as to subsequent events, according to
9 proof.

10 26. Defendants knew, or should have known, that these elements and policies
11 rendered Sheraton Gateway inaccessible, violate state and federal law, and
12 interfere with or deny access to individuals with similar mobility disabilities. Upon
13 information and belief, Defendants have the financial resources to remove these
14 barriers and make Sheraton Gateway accessible to the physically disabled. To date,
15 however, Defendants refuse to remove those barriers or to provide full and equal
16 access to Sheraton Gateway.

17 27. As a result of Defendants' actions and failures to act and failure to provide
18 disabled access, Plaintiff suffered a denial of his civil rights emotional discomfort,
19 and denial of rights to full and equal access to public accommodations, all to his
20 general, special, and statutory damages. On each such denial of access, Plaintiff
21 has encountered barriers to full and equal access which have caused him difficulty,
22 discomfort, and embarrassment. Plaintiff has been required to seek legal assistance,
23 and seeks statutory attorney fees, litigation expenses, and costs, under federal and
24 state law.

25 28. Plaintiff's goal in this suit is a positive one: to make Sheraton Gateway fully
26 accessible to persons with similar mobility disabilities.

27 **FIRST CLAIM:**

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES**

1 **VIOLATION OF THE ADA, TITLE III**

2 **[42 U.S.C. §§ 12101 et seq.]**

3 29. Plaintiff repleads and incorporates by reference, as if fully set forth
4 hereafter, the allegations contained in all paragraphs of this Complaint and
5 incorporates them here as if separately repled.

6 30. Plaintiff was at all times relevant here a qualified individual with a disability
7 as defined by the ADA, as he has impairments that substantially limit one or more
8 major life activities.

9 31. Plaintiff has reasonable grounds for believing he will be subjected to
10 discrimination each time he may attempt to access and use the subject facilities.

11 32. The subject property and facility are among the “private entities,” which are
12 considered “public accommodations” for purposes of Title III of the ADA. 42
13 U.S.C. § 12181(7).

14 33. The acts and omissions of Defendants set forth here were in violation of
15 Plaintiff's rights under the ADA and the regulations promulgated under it, 28
16 C.F.R. Part 36, *et seq.* For example, Section 242.2 of the 2010 ADA Standards for
17 Accessible Designs provides “242.2 Swimming Pools. At least two accessible
18 means of entry shall be provided for swimming pools. Accessible means of entry
19 shall be swimming pool lifts complying with 1009.2; sloped entries complying
20 with 1009.3 . . . 242.4 Spas. At least one accessible means of entry shall be
21 provided for spas. Accessible means of entry shall comply with
22 swimming pool lifts complying with 1009.2.” Defendants have violated this
23 regulation.

24 34. Plaintiff alleges on information and belief that Sheraton Gateway was
25 designed and constructed (or both) after January 26, 1993 -- independently
26 triggering access requirements under Title III of the ADA. Here, Defendants
27 violated the ADA by designing or constructing (or both) the Sheraton Gateway in a

1 manner that did not comply with federal and state disability access standards even
2 though it was practicable to do so.

3 35. The removal of each of the barriers complained of by Plaintiff were at all
4 times here mentioned “readily achievable” under the standards §§12181 and 12182
5 of the ADA.

6 36. As noted throughout this Complaint, the removal of each of the architectural
7 barriers complained of here was also required under California law.

8 37. Plaintiff alleges on information and belief that Sheraton Gateway was
9 modified after January 26, 1993. Any alterations, structural repairs, or additions
10 since January 26, 1993, have independently triggered requirements for the removal
11 of barriers to access for disabled persons per § 12183 of the ADA.

12 38. Defendants have discriminated against Plaintiff in violation of Title III of the
13 ADA by: (a) providing benefits that are unequal to that afforded to people without
14 disabilities; (b) failing to make reasonable modifications in policies, practices, or
15 procedures when such modifications are necessary to afford (and would not
16 fundamentally alter the nature of) the goods, services, facilities, privileges,
17 advantages, or accommodations of Sheraton Gateway to individuals with
18 disabilities; (c) failing to remove architectural barriers that are structural in nature
19 in existing facilities where such removal is readily achievable; and (d) where
20 Defendants can demonstrate the removal of architectural barriers is not readily
21 achievable, failing to make the goods, services, facilities, privileges, advantages, or
22 accommodations of Sheraton Gateway available through alternative methods if
23 such methods are readily achievable. On information and belief, as of the date of
24 Plaintiff’s most recent visit to Sheraton Gateway and as of the filing of this
25 Complaint, the subject premises have denied and continue to deny full and equal
26 access to Plaintiff and to other similarly mobility disabled persons in other
27 respects, which violate Plaintiff’s rights to full and equal access and which

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES

1 discriminate against him on the basis of his disability, thus wrongfully denying him
 2 the full and equal enjoyment of the goods, services, facilities, privileges,
 3 advantages and accommodations, in violation of §§ 12182 and 12183 of the ADA.
 4 The ability to enter and exit Sheraton Gateway (including park in the designated
 5 accessible parking stalls) with ease and to use the swimming pool and spa is a
 6 fundamental necessity. Without this ability, Plaintiff is unable to avail himself
 7 of the goods and services offered at Sheraton Gateway on a full and equal basis.
 8 Therefore, the benefits of creating access, including, but not limited to, providing
 9 access including to the swimming pool and spa, does not exceed the costs of
 10 readily achievable barrier removal. These costs are fundamental to doing business,
 11 like any other essential function of operating a public accommodation. It is thus
 12 readily achievable to remove these barriers. Furthermore, these are the types of
 13 barriers identified by the Department of Justice as presumably readily achievable
 14 to remove, and, in fact, these barriers are readily achievable to remove.

15 39. Under the ADA, 42 U.S.C. 12188 *et seq.*, Plaintiff is entitled to the remedies
 16 and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 U.S.C.
 17 2000(a)-3(a), as he is being subjected to discrimination based on disability in
 18 violation of the ADA or has reasonable grounds for believing that he is about to be
 19 subjected to discrimination.

20 40. Plaintiff seeks relief under remedies set forth in § 204(a) of the Civil Rights
 21 Act of 1964, 42 U.S.C. 2000(a)-3(a), and under Federal Regulations adopted

22 WHEREFORE, Plaintiff requests relief as outlined below.

23 **SECOND CLAIM:**

24 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

25 **[Cal. Civil Code §§ 51 *et seq.*]**

26 41. Plaintiff repleads and incorporates by reference, as if fully set forth again
 27 here, the allegations contained in all paragraphs of this Complaint and incorporates

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
 DAMAGES**

1 them here by reference as if separately replied hereafter.

2 42. Sheraton Gateway is a business establishment within the meaning of the
3 Unruh Act.

4 43. Defendants are the owner and/or operators of a business establishment.

5 44. Defendants violated the Unruh Act by their acts and omissions:

- 6 a. Failure to construct or alter Sheraton Gateway in compliance with
7 state building code and state architectural requirements;
- 8 b. Failure to remove known barriers to access at Sheraton Gateway;
- 9 c. Failure to modify policies and procedures as necessary to ensure
10 Plaintiff full and equal access to the accommodations, advantages,
11 facilities, privileges, or services of Sheraton Gateway; and
- 12 d. Violation of the ADA, a violation of which is a violation of the Unruh
13 Act. Cal. Civil Code § 51(f).

14 45. Plaintiff has experienced barriers to access at Sheraton Gateway, all of
15 which have caused him major difficulty, discomfort, and embarrassment. Plaintiff
16 suffered mental and emotional damages, including statutory and compensatory
17 damages, according to proof.

18 46. On information and belief, Sheraton Gateway is also illegally inaccessible in
19 multiple other respects. As noted above, the barriers to access described in this
20 Complaint are listed without prejudice to Plaintiff citing additional barriers to
21 access after inspection by Plaintiff's access consultant(s)/expert(s).

22 47. These barriers to access render Sheraton Gateway and its premises
23 inaccessible to and unusable by persons with mobility disabilities. All facilities
24 must be brought into compliance with all applicable federal and state code
25 requirements, according to proof. Plaintiff prays for leave to amend this
26 Complaint, if necessary, to obtain full injunctive relief as to barriers that limit or
27 deny full and equal access to persons with similar mobility disabilities.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES

1 48. Each violation of the ADA constitutes a separate violation of California
2 Civil Code § 51(f), thus independently justifying an award of damages and
3 injunctive relief under California law, including, but not limited to, Civil Code §
4 52(a).

5 49. As for Defendants' violations of the Unruh Act that are not predicated on
6 violations of the ADA, Defendants' behavior was intentional: they were aware of
7 or were made aware of their duties to remove barriers that prevent persons with
8 mobility disabilities like Plaintiff from obtaining full and equal access to Sheraton
9 Gateway. Defendants' discriminatory practices and policies that deny full
10 enjoyment of Sheraton Gateway to persons with physical disabilities indicate
11 actual and implied malice and conscious disregard for the rights of Plaintiff and
12 other similarly disabled individuals. Defendants have thus engaged in willful
13 affirmative misconduct in violating the Unruh Act.

14 50. On information and belief, the access features of Sheraton Gateway have not
15 been improved since Plaintiff's visits there. Plaintiff's injuries are ongoing so long
16 as Defendants do not modify their policies and procedures and provide fully
17 accessible facilities for Plaintiff and other persons with similar mobility
18 disabilities.

19 51. At all times mentioned, Defendants knew, or in the exercise of reasonable
20 diligence should have known, that his barriers, policies and practices at its facilities
21 violated disabled access requirements and standards and had a discriminatory
22 impact upon Plaintiff and upon other persons with similar mobility disabilities, but
23 Defendants failed to rectify the violations, and presently continues a course of
24 conduct in maintaining barriers that discriminate against Plaintiff and similarly
25 situated disabled persons.

26 WHEREFORE, Plaintiff requests relief as outlined below.
27

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES

1 **THIRD CLAIM:**

2 **VIOLATION OF THE CALIFORNIA HEALTH AND SAFETY CODE**

3 **[Cal. Health and Safety Code §§19955 *et seq.*]**

4 52. Plaintiff repleads and incorporates by reference, as if fully set forth
5 hereafter, the allegations contained in all paragraphs of this Complaint and
6 incorporates them herein as if separately replied.

7 53. Health & Safety Code §19955 provides in pertinent part:

8 The purpose of this part is to ensure that public accommodations or
9 facilities constructed in this state with private funds adhere to the
10 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
11 of Title 1 of the Government Code. For the purposes of this part
12 “public accommodation or facilities” means a building, structure,
13 facility, complex, or improved area which is used by the general
14 public and shall include auditoriums, hospitals, theaters, restaurants,
15 hotels, motels, stadiums, and convention centers. When sanitary
facilities are made available for the public, clients or employees in
such accommodations or facilities, they shall be made available for
the handicapped.

16 54. Health & Safety Code §19956, which appears in the same chapter as
17 §19955, provides in pertinent part, “accommodations constructed in this state shall
18 conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
19 of Title 1 of the Government Code” Health & Safety Code §19956 was
20 operative July 1, 1970 and is applicable to all public accommodations constructed
21 or altered after that date.

22 55. On information and belief, portions of Sheraton Gateway and/or of the
23 building(s) were constructed and/or altered after July 1, 1970, and substantial
24 portions of Sheraton Gateway and/or the building(s) had alterations, structural
25 repairs, and/or additions made to such public accommodations after July 1, 1970,
26 thereby requiring Sheraton Gateway to be subject to the requirements of Part 5.5,
27 §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural

repairs or additions per Health & Safety Code §19959.

56. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions. Effective July 1, 1982, Title 24 of the California Building Standards Code adopted the California State Architect's Regulations, and these regulations must be complied with as to any alterations and/or modifications of Sheraton Gateway and/or the building(s) occurring after that date. Construction changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant to the "ASA" requirements, the American Standards Association Specifications, A117.1-1961.

57. On information and belief, at the time of the construction and modification of said building, all buildings and facilities covered were required to conform to each of the standards and specifications described in the American Standards Association Specifications and/or those contained in the California Building Code.

58. Sheraton Gateway is a "public-accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq.*

59. As a result of the actions and failure to act of Defendants, and as a result of the failure to provide proper and legally accessible public facilities, Plaintiff was denied Plaintiff's right to full and equal access to public facilities and suffered a loss of civil rights and rights as a person with physical disabilities to full and equal access to public facilities.

WHEREFORE, Plaintiff requests relief as outlined below.

FOURTH CLAIM:

VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT

[Cal. Civil Code §§ 54 *et seq.*]

60. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the allegations contained in all paragraphs of this Complaint and

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
DAMAGES**

incorporates them herein as if separately replied.

61. Sheraton Gateway is a place of public accommodation and/or places to which the general public is invited and, as such, they are obligated to comply with the provisions of the California Disabled Persons Act (“CDPA”), California Civil Code § 54 *et seq.*

62. The CDPA guarantees, inter alia, that persons with disabilities have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. California Civil Code § 54.

63. The CDPA also guarantees, inter alia, that persons with disabilities are entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, and privileges of covered entities. California Civil Code § 54.1(a) (1).

64. The CDPA also provides that a violation of the ADA is *a per se* violation of CDPA, California Civil Code § 54.1(d).

65. Defendants have violated the CDPA by, inter alia, denying and/or interfering with Plaintiff right to full and equal access as other members of the general public to the accommodations, advantages, and its related facilities due to his disability.

WHEREFORE, Plaintiff requests relief as outlined below.

PRAYER FOR RELIEF:

1. Plaintiff has no adequate remedy at law to redress the wrongs suffered as explained in this Complaint. Plaintiff has suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of Defendants as alleged here, unless Plaintiff is granted the relief he requests. Plaintiff and Defendants have an actual controversy and opposing legal positions as to Defendants’ violations of the laws of the United States and the State of

1 California. The need for relief is critical because the rights at issue are paramount
2 under the laws of the United States and the State of California.

3 2. Plaintiff requests a declaratory judgment that Defendants' actions,
4 omissions, and failures—including but limited to: failing to remove known
5 architectural barriers at Sheraton Gateway to make the facilities “accessible to and
6 useable by” mobility disabled persons; failing to construct and/or alter Sheraton
7 Gateway in compliance with federal access standards, state building code, and state
8 architectural requirements; and failing to make reasonable modifications in policy
9 and practice for Plaintiff and other persons with similar mobility disabilities.

10 3. Plaintiff requests that the Court issue an order enjoining Defendants, their
11 agents, officials, employees, and all persons and entities acting in concert with
12 them.¹

- 13 a. From continuing the unlawful acts, conditions, and practices described
14 in this Complaint;
- 15 b. To provide reasonable accommodation for persons with disabilities in
16 all its programs, services, and activities at Sheraton Gateway;
- 17 c. To ensure that persons with disabilities are not denied the benefits of,
18 or participation in, programs, services, and activities at Sheraton
19 Gateway;
- 20 d. To modify the above-described facilities to provide full and equal
21 access to persons with mobility disabilities, including, without
22 limitation, the removal of all barriers to access where “readily
23 achievable;”
- 24 e. To maintain such accessible facilities once they are provided;

25
26
27 ¹ Plaintiff does not seek injunctive relief under Cal. Civil Code section 55.

1 f. To train Defendants' employees and agents in how to accommodate
2 the rights and needs of physically disabled persons at Sheraton
3 Gateway;

4 g. To implement nondiscriminatory protocols, policies, and practices for
5 accommodating persons with mobility disabilities at Sheraton
6 Gateway.

7 4. Plaintiff requests that the Court retain jurisdiction over Defendants until the
8 Court is satisfied that Defendants' unlawful policies, practices, acts and omissions,
9 and maintenance of inaccessible public facilities as complained of here no longer
10 occur, and cannot recur;

11 5. Plaintiff requests all appropriate damages, including, but not limited to,
12 statutory, compensatory, and treble damages in an amount within the jurisdiction
13 of the Court, all according to proof;

14 6. Plaintiff requests all reasonable statutory attorney fees, litigation expenses,
15 and costs of this proceeding as provided by law, including, but not limited to, the
16 ADA, 42 U.S.C. § 12205; the Unruh Act, California Civil Code § 52; and "public
17 interest" attorney fees, litigation expenses and costs under California Code of Civil
18 Procedure § 1021.5.

19 7. Plaintiff requests prejudgment interest under California Civil Code § 3291;

20 8. Plaintiff requests interest on monetary awards as permitted by law; and

21 9. Plaintiff requests any other relief that this Court may deem just and proper.
22
23
24
25
26
27

1 Date: February 10, 2023

REIN & CLEFTON
ALLACCESS LAW GROUP

2
3 /s/ Irakli Karbelashvili

4 By IRAKLI KARBELASHVILI, Esq.
5 Attorney for Plaintiff
6 JAMES ALGER
7

8 **JURY DEMAND**

9 Plaintiff demands a trial by jury for all claims for which a jury is permitted.
10

11 Date: February 10, 2023

REIN & CLEFTON
ALLACCESS LAW GROUP

12
13 /s/ Irakli Karbelashvili

14 By IRAKLI KARBELASHVILI, Esq.
15 Attorney for Plaintiff
16 JAMES ALGER
17
18
19
20
21
22
23
24
25
26
27